IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 170 of 2005
With
CIVIL APPLICATION No. 8218 of 2005
In
SECOND APPEAL No. 170 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATKUMAR DAHYALAL PANDYA - Appellant(s)
Versus
ADARIYANA GRAM PANCHAYAT - Defendant(s)

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Appearance :
MR RA MISHRA for Appellant(s) : 1,
MR ASHISH M DAGLI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/10/2006

ORAL JUDGMENT

1. The appeal is admitted for hearing on the following question of law;

Whether on the facts and in the circumstances of the case, the first appellate court was justified in dismissing the suit in toto even when it observed that the Panchayat would be entitled to take an action either under Section 94 of the Gujarat Panchayat Act, 1963 or under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972?

2. On earlier occasion between the very same party, the very same question has been decided by this Court with a directions as under;

"Instead, it is hereby directed that the defendant would be entitled to evict the plaintiff in accordance with the provisions of law as applicable between the parties. If the defendant feels that they would be entitled to take action under Section 94 of the Panchayat Act, 1963, then they would give proper opportunity of hearing to the plaintiff, decide all the objections raised by the plaintiff by a speaking order in the matter. In case, the objections filed by the plaintiff are overruled, then at least for a period of 30 days, the construction raised by the plaintiff shall not be demolished by the Panchayat giving reasonable opportunity to the plaintiff to approach either the appellate Court or any other forum which is available to him under the law. The Panchayat, however, would be

entitled to take an action under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and in such a case, the plaintiff would not be allowed to raise objections that the Panchayat is not entitled to invoke the jurisdiction under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 because according to the plaintiff's own submission, an action under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 would be maintainable against him. The directions contained aforesaid shall be treated to be in form of an injunction. The appeal is finally disposed of. No costs. Let a decree be framed accordingly.

3. Learned counsel for the parties submit that the appeal may be finally decided with the very same directions. It is accordingly ordered. The appeal stands disposed of with the afore-quoted directions made in Second Appeal No.181 of 2005.

4. In view of the final disposal of the appeal, no orders on Civil Application No.8218 of 2005.

(R.S.GARG,J.)

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